

MAR 1 2011

JEANNE HICKS, Clerk
By: T. Bragdon

March 1, 2011
State of Arizona vs. James Arthur Ray
Cause No. V1300CR201080049

PRELIMINARY INSTRUCTIONS TO THE JURY

Duty of Jury:

Ladies and Gentlemen: Now that you have been sworn, I will tell you something about your duties as jurors and give you some instructions. At the end of the trial I will give you more detailed instructions. Those final instructions will replace these preliminary instructions and control your deliberations.

It is your duty to determine what the facts are in the case by determining what actually happened. Determine the facts only from the evidence produced in Court. When I say "evidence," I mean the testimony of witnesses and the exhibits introduced in Court. You should not speculate or guess about any fact. You must not be influenced by sympathy or prejudice. You must not be concerned with any opinion that you feel I have about the facts. You, as jurors, are the sole judges of what happened.

Importance of Jury Service:

Jury service is an important part of our system of justice, with a long and distinguished tradition in western civilization.

From the beginning, American law has viewed the jury system as an effective means of drawing on the collective wisdom, experience, and fact-finding abilities of persons such as yourselves. While it may be an occasional inconvenience, or worse, jury service is an important responsibility for you, one that I am sure you will take seriously.

Alternate Jurors:

Members of the jury, the law provides for a jury of 12 persons in a case such as this. In this case we have seated six alternate jurors so that,

if a juror becomes ill or has a personal emergency, the trial can continue without that juror.

Just because you are not one of the first twelve jurors does not mean you are necessarily going to be an alternate. The alternates will be chosen by lot at the end of the case. Until then, each of you must consider yourself a juror in this case. Please do not be concerned with who may or may not be an alternate.

No Transcript Available; Taking Notes:

At the end of the trial, you will have to make your decision based on what you recall of the evidence. You will not be given a written transcript of any testimony. You should pay close attention to the testimony as it is given.

You have been provided with note pads and pens. If you wish, you may take notes during the trial. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note-taking distract you so that you miss hearing or seeing other testimony. When you leave the jury box for a recess, leave your notes in your seats.

Whether you take notes or not, you should rely upon your own memory of what was said and not be overly influenced by the notes of other jurors.

Do not be influenced at all by my taking notes at times. What I write down may have nothing to do with what you will be concerned with at this trial.

You will be given the opportunity to ask questions of the witnesses. After the lawyers have finished their questions and before each witness is excused from the stand, I will ask if any of the jurors have questions for the witness. If you have a question, write it on a slip of paper. Do not sign it. The bailiff will pick it up and hand it to me. The attorneys and I will review the question and I will determine whether to pose the question. If your question is not asked, it is no reflection on the person offering the question. Do not speculate on why the question was not asked. Admission of

evidence in court is governed by rules of law, and the Judge makes these determinations.

If you should have a general question about the proceedings, a question you feel is important enough to ask the court, again, write it down on a slip of paper, without signing it, and pass it to the bailiff during recess or when you have the opportunity. The bailiff will immediately bring the question to me. It will be reviewed by the attorneys and, if it can be answered, it will be at an appropriate point in the trial. The answer may refer you to instructions given or may ask you to await final instructions. In some cases, the court may not be able to supply any answer and will so report.

Trial Schedule:

The trial is expected to last three to four months. Trial will be conducted from Tuesday through Friday of each week until concluded. If the trial is not completed by May 12, trial will not be held from Friday, May 13 to Wednesday, May 25. Trial would resume on Thursday, May 26. We will all do our best to move the case along but delays frequently occur. These will not be anyone's fault, so do not hold them against the parties. Delays usually occur because the attorneys and I often need to resolve certain legal matters before these matters may be presented to you in court or because I am busy with emergency matters in other cases.

The usual hours of trial will be from 9:00 a.m. to 12:00 p.m. and 1:30 p.m. to 5:00 p.m. We will take a recess mid-morning and mid-afternoon.

Unless a different starting time is announced prior to recessing for the evening, you may assume a starting time of 9:00 a.m. for the next day.

Trials generally proceed in the following order:

First, the prosecuting attorney will make an opening statement which gives a preview of the case. The Defendant's attorney may make an opening statement which outlines the defense case. The opening statement by the Defendant's attorney may be made immediately after the State's statement or it may be postponed until after the State's case has been presented. What is said in opening statements is not evidence nor is

it an argument. The purpose of an opening statement is to help you prepare for anticipated evidence.

Second, the State will present its evidence. After the State finishes, the Defendant may present evidence if he wishes. The State has the burden of proving the Defendant guilty beyond a reasonable doubt and the Defendant is not required to produce evidence of any kind. However, if the Defendant produces evidence, the State may present additional, or rebuttal, evidence.

With each witness, there is a direct examination, a cross examination by the opposing side, and finally a redirect examination. Then, members of the jury are given the opportunity to pose questions. This usually ends the testimony of that witness.

Third, after all the evidence is in, I will read and give you copies of the final instructions. These final instructions are the rules of law you must follow in reaching your verdict.

Fourth, the attorneys will make closing arguments to tell you what they think the evidence shows and how they think you should decide the case. The State has the right to open and close the arguments since the State has the burden of proof. Just as in opening statements, what is said in closing arguments is not evidence.

Fifth, you will deliberate in the jury room about the evidence and rules of law and decide upon a verdict. Once you agree upon a verdict, it will be read in court with you and the parties present.

Finally, you will be discharged and released from the restrictions I will read to you next.

Media Coverage:

There will be news media coverage of the trial. What the news media covers is up to them. You must avoid all news media coverage during the trial. If you do encounter something about this case in the news media during the trial, end your exposure to it immediately and report it to me as soon as you can. There will be cameras in the courtroom during the trial; do not be concerned about them. Court rules require that the proceedings

be photographed or televised in such a way that no juror can be recognized.

Admonition:

I am now going to say a few words about your conduct as jurors. I am going to give you some do's and don'ts, mostly don'ts, which I will call "The Admonition."

Do wear your juror badge at all times in and around the courthouse so everyone will know you are on a jury.

Each of you has gained knowledge and information from the experiences you have had prior to this trial. Once this trial has begun you are to determine the facts of this case only from the evidence that is presented in this courtroom. Arizona law prohibits a juror from receiving evidence not properly admitted at trial. Therefore, do not do any research or make any investigation about the case on your own. Do not view or visit the locations where the events of the case took place. Do not consult any source such as a newspaper, a dictionary, a reference manual, television, radio or the Internet for information. If you have a question or need additional information, submit your request **in writing** and I will discuss it with the attorneys.

One reason for these prohibitions is because the trial process works by each side knowing exactly what evidence is being considered by you and what law you are applying to the facts you find. As I previously told you, the only evidence you are to consider in this matter is that which is introduced in the courtroom. The law that you are to apply is the law that I give you in the final instructions. This prohibits you from consulting any outside source.

Do not talk to anyone about the case, or about anyone who has anything to do with it, and do not let anyone talk to you about those matters, until the trial has ended, and you have been discharged as jurors. Until then, you may tell people you are on a jury, and you may tell them the estimated schedule for the trial, but do not tell them anything else except to say that you cannot talk about the trial until it is over.

It is your duty not to speak with or permit yourselves to be addressed by any person on any subject connected with the trial. If someone should try to talk to you about the case, stop him or her or walk away. If you should overhear others talking about the case, stop them or walk away. If anything like this does happen, report it to me or any member of my staff as soon as you can. To avoid even the appearance of improper conduct, do not talk to any of the parties, the lawyers, the witnesses or media representatives about anything until the case is over, even if your conversation with them has nothing to do with the case. For example, you might pass an attorney in the hall, and ask what good restaurants there are downtown, and somebody from a distance may think you are talking about the case. So, again, please avoid even the *appearance* of improper conduct.

The lawyers and parties have been given the same instruction about not speaking with you jurors, so do not think they are being unfriendly to you. When you go home tonight and family and friends ask what the case is about, remember you cannot speak with them about the case. All you can tell them is that you are on a jury, the estimated schedule for the trial, and that you cannot talk about the case until it is over.

In a civil case, the jurors are permitted to discuss the evidence during the trial while the trial progresses. In a criminal case such as this, however, the jurors are not permitted to discuss the evidence until all the evidence has been presented and the jurors have retired to deliberate on the verdict. You therefore may not discuss the evidence among yourselves until you retire to deliberate on your verdict.

Do not form final opinions about any fact or about the outcome of the case until you have heard and considered all of the evidence, the closing arguments, and the rest of the instructions I will give you on the law. Keep an open mind during the trial. Form your final opinions only after you have had an opportunity to discuss the case with each other in the jury room at the end of the trial.

Before each recess, I will not repeat the entire Admonition I have just given you. I will probably refer to it by saying, "Please remember the Admonition," or something like that. However, even if I forget to make any reference to it, remember that the Admonition still applies at all times during the trial.

Bench Conferences and Recesses:

From time to time during the trial, it may become necessary for me to talk with the attorneys out of the hearing of the jury, either by having a conference at the bench when the jury is present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum. I may not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of what your verdict should be. Please do not be concerned with what we are discussing at any bench conference we may have. Please respect the privacy of those participating in the bench conference in order to maintain the fairness of the trial.

Questions:

If at any time during the trial you have difficulty hearing or seeing something that you should be hearing or seeing, or if you get into personal distress for any reason, raise your hand and let me know.

If you have any questions about parking, restaurants, or other personal matters relating to your jury service, feel free to ask one of the court staff; but remember that the Admonition applies to court staff, as it does to everybody else, so do not try to discuss the case with court staff.

Lawyers' Comments Are Not Evidence:

In their opening statements and closing arguments, the lawyers will talk to you about the law and the evidence. What the lawyers say is not evidence, but it may help you to understand the law and the evidence.

Stipulations:

The lawyers are permitted to stipulate that certain facts exist. This means that both sides agree those facts do exist and are part of the evidence.

Evidence to Be Considered:

You are to determine what the facts in the case are from the evidence produced in Court. If the Court sustained an objection to a lawyer's question, you must disregard it and any answer given.

Any testimony stricken from the Court record must not be considered.

Evidence, Statements of Lawyers and Rulings:

As I mentioned earlier, it is your job to decide from the evidence presented in Court what the facts are. Here are six rules on what is and what is not evidence.

1. Evidence to be considered: You are to determine the facts only from the testimony of witnesses and from exhibits admitted in evidence.

2. Lawyers' Statements: Ordinarily, statements or arguments made by the lawyers are not evidence. Their purpose is to help you understand the evidence and law. However, if the lawyers for all parties agree or stipulate some particular fact is true, you should accept it as the truth.

3. Questions to a Witness: By itself, a question is not evidence. A question can only be used to give meaning to a witness's answer.

4. Objections to questions: If a lawyer objects to a question and I do not allow the witness to answer, you must not try to guess what the answer might have been. You must also not try to guess the reason why the lawyer objected in the first place. Admission of evidence in Court is governed by rules of law. I will apply those rules and resolve any issues that arise during the trial concerning the admission of evidence.

5. Rejected evidence: At times during the trial, testimony or exhibits will be offered into evidence, but I might not allow them to become evidence. Since they never become evidence, you must not consider them.

6. Stricken evidence: At times I may order some evidence to be stricken from the record. Then it is no longer evidence and you must not consider it for any purpose.

Direct and Circumstantial Evidence:

Evidence may be direct or circumstantial. Direct evidence is the testimony of a witness who saw, heard, or otherwise sensed an event. Circumstantial evidence is the proof of a fact or facts from which you may

find another fact. The law makes no distinction between direct and circumstantial evidence. It is for you to determine the importance to be given to the evidence regardless of whether it is direct or circumstantial.

Exclusion of Witnesses:

The Rule of Exclusion of Witnesses is in effect and will be observed by all witnesses until the trial is over and a result announced. This means all witnesses will remain outside the courtroom during the entire trial except when called to the witness stand. Each witness will wait in an area directed by the bailiff unless other arrangements have been made with the attorney who has called the witness. The Rule also forbids witnesses from telling anyone but the lawyers what they will testify about or what they have testified to. If witnesses do talk to the lawyers about their testimony, other witnesses and jurors should avoid being present or overhearing.

The lawyers are directed to inform all their witnesses of this rule and to remind them of their obligations from time to time as may be necessary. The parties and their lawyers should keep a careful lookout to prevent any potential witness from remaining in the courtroom if they inadvertently enter.

Credibility of Witnesses:

In deciding the facts of this case, you should consider what testimony to accept, and what to reject. You may accept everything a witness says, or part of it, or none of it.

In evaluating testimony, you should use the tests for truthfulness that people use in determining matters of importance in everyday life, including such factors as: the witness's ability to see or hear or know the things the witness testified to; the quality of the witness's memory; the witness's manner while testifying; whether the witness had any motive, bias, or prejudice; whether the witness was contradicted by anything the witness said or wrote before trial, or by other evidence; and the reasonableness of the witness's testimony when considered in the light of the other evidence.

Consider all of the evidence in the light of reason, common sense, and experience.

Expert Witness:

A witness qualified as an expert by education or experience may state opinions on matters in that witness's field of expertise, and may also state reasons for those opinions.

Expert opinion testimony should be judged just as any other testimony. You are not bound by it. You may accept it or reject it, in whole or in part, and you should give it as much credibility and weight as you think it deserves, considering the witness's qualifications and experience, the reasons given for the opinions, and all the other evidence in the case.

Testimony of Law Enforcement Officers:

The testimony of a law enforcement officer is not entitled to any greater or lesser importance or believability merely because of the fact that the witness is a law enforcement officer. You are to consider the testimony of a peace officer just as you would the testimony of any other witness.

Indictment Is Not Evidence:

The State has charged Mr. Ray with three counts of manslaughter. These charges are not evidence against the Defendant. You must not think the Defendant is guilty just because of these charges. Mr. Ray has pled "not guilty." The plea of "not guilty" means that the State must prove each element of the charges beyond a reasonable doubt.

Presumption of Innocence-Reasonable Doubt:

The law does not require a defendant to prove innocence. Every defendant is presumed by law to be innocent. You must start with the presumption that the Defendant is innocent.

The State has the burden of proving Mr. Ray guilty beyond a reasonable doubt. This means the State must prove each element of each charge beyond a reasonable doubt. In civil cases, it is only necessary to prove that a fact is more likely true than not true, or that its truth is highly probable. In criminal cases such as this, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of Mr. Ray's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every doubt. If, based on your consideration of the evidence, you are firmly convinced that Mr. Ray is guilty of the crimes charged, you must find him guilty. If, on the other hand, you think there is a real possibility that Mr. Ray is not guilty, you must give him the benefit of the doubt and find him not guilty.

Evidence of any Kind:

The State must prove guilt beyond a reasonable doubt based on the evidence. Mr. Ray is not required to produce evidence of any kind. The decision on whether to produce any evidence is left to the Defendant acting with the advice of an attorney. The Defendant's decision in this regard is not evidence of guilt.

Constitutional Right Not To Testify:

The State must prove guilty beyond a reasonable doubt based on the evidence. A defendant in a criminal case has a constitutional right to not testify at trial, and the exercise of that right cannot be considered by the jury in determining whether a defendant is guilty or not guilty.

Jury Not to Consider Penalty:

You must decide whether Mr. Ray is guilty or not guilty by determining what the facts in the case are and applying the final jury instructions. You must not consider the possible punishment when deciding on guilt. Punishment is left to the judge.

Separate Counts:

Each count charges a separate and distinct offense. You must decide each count separately based on the evidence and the law applicable to it, uninfluenced by your decision on any other count. You may find that the State has proved, beyond a reasonable doubt, all, some or none of the charged offenses. Your finding for each count must be stated in a separate verdict.

Manslaughter:

The State of Arizona has charged Mr. Ray with three counts of manslaughter. The crime of manslaughter requires proof that the Defendant:

1. caused the death of another person; and
2. was aware of and showed a conscious disregard of a substantial and unjustifiable risk of death.

The risk must be such that disregarding it was a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

Conclusion to Preliminary Instructions:

The rules of law I have discussed with you in the past few minutes are preliminary only. At the end of the case I will read to you and give you a copy of the final instructions of law. In deciding the case you must be guided by the final instructions.